



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Military and Overseas Voter Empowerment (MOVE) Act

President Obama signed the federal Military and Overseas Voter Empowerment (MOVE) Act on October 28, 2009. The Act amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. ss. 1973ff to 1973ff-7, relating to voting by military and overseas voters.

This Information Memorandum describes the provisions of the MOVE Act that require compliance by states, including a requirement that states transmit absentee ballots to military and overseas voters no later than 45 days before an election for federal office. It also describes provisions of Wisconsin law that relate to the provisions of the MOVE Act.

The MOVE Act requires that states establish certain requirements for absentee voting by military and overseas voters in federal elections. The Act is enforced by the U.S. Department of Justice. It should be noted that the MOVE Act requirements only apply to elections for federal office and not directly to elections for state or local office. However, Wisconsin law generally applies the same laws to federal, state, and local elections.

Federal law defines “absent uniformed services voter” and “overseas voter” as the following:

Absent Uniformed Services Voter - (A) a member of a uniformed service¹ on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote; (B) a member of the merchant marine² who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and (C) a spouse or dependent of a member referred to in [(A)

¹ “Uniformed services” is defined as the Army, Navy, Air Force, Marine Corps, and Coast Guard; the commissioned corps of the Public Health Service; and the commissioned corps of the National Oceanic and Atmospheric Administration. [42 U.S.C. s. 1973ff-6 (7).]

² “Member of the merchant marine” is defined as an individual, other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways, who is: (A) employed as an officer or crew member of a vessel documented under U.S. laws, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or (B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel. [42 U.S.C. s. 1973ff-6 (4).]

or (B), above,] who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote. [42 U.S.C. s. 1973ff-6 (1).]

Overseas Voter – (A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved; (B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States. [42 U.S.C. s. 1973ff-6 (5).]

This Information Memorandum refers to absent uniformed services voters and overseas voters collectively as “UOCAVA voters.”

Wisconsin law contains two definitions of “military elector” and two definitions of “overseas elector”:

Military Elector [s. 6.22 (1) (b), Stats.] - (1) members of a uniformed service³; (2) members of the merchant marine⁴ of the United States; (3) civilian employees of the United States and civilians officially attached to a uniformed service who are serving outside the United States; (4) Peace Corps volunteers; or (5) spouses and dependents of those listed in the above categories residing with or accompanying them.

Military Elector [s. 6.34 (1) (a), Stats.] - a member of a uniformed service on active duty who, by reason of that duty, is absent from the residence where the member is otherwise qualified to vote; a member of the merchant marine, as defined in s. 6.22 (1) (a), who by reason of service in the merchant marine, is absent from the residence where the member is otherwise qualified to vote; or the spouse or dependent of any such member who, by reason of the duty or service of the member, is absent from the residence where the spouse or dependent is otherwise qualified to vote.

³ “Uniformed service” is defined as the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard; the commissioned corps of the federal Public Health Service; or the commissioned corps of the National Oceanic and Atmospheric Administration. [s. 6.22 (1) (c), Stats.]

⁴ “Member of the merchant marine” is defined as an individual, other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways, who is employed as an officer or crew member of a vessel documented under U.S. laws, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel. [s. 6.22 (1) (a), Stats.]

Overseas Elector [s. 6.24 (1), Stats.] - a U.S. citizen who is not disqualified from voting under s. 6.03, who has attained or will attain the age of 18 by the date of an election at which the citizen proposes to vote and who does not qualify as a resident of this state under s. 6.10, but who was last domiciled in this state or whose parent was last domiciled in this state immediately prior to the parent's departure from the United States, and who is not registered to vote or voting in any other state, territory or possession.

Overseas Elector [s. 6.34 (1) (b), Stats.] - an elector who resides outside the United States and who is qualified under federal law to vote in elections for national office in this state because the elector was last domiciled in this state immediately prior to the elector's departure from the United States.

The definition of “military elector” in s. 6.22 (1) (b), Stats., is broader than the definition of “military elector” in s. 6.34 (1) (a), Stats., because it includes civilian employees of the United States, civilians officially attached to a uniformed service, Peace Corps volunteers, and spouses or dependents of such individuals. To be considered a “military elector” under the narrower definition in s. 6.34 (1) (a), Stats., an elector must be absent from his or her voting residence. The definition of “military elector” in s. 6.34 (1) (a), Stats., is identical to the definition of “absent uniformed services voter” under federal law. In addition, the definition of “overseas elector” in s. 6.24 (1), Stats., is broader than the definition of “overseas elector” in s. 6.34 (1) (b), Stats., because it includes children of electors who were last domiciled in the state prior to departure from the United States.

This Information Memorandum identifies the appropriate definition of “military elector” or “overseas elector” for each state law provision described.

THE MOVE ACT AND STATE LAW

The provisions of the MOVE Act that require state compliance are described in the following sections. Unless otherwise noted, the provisions apply to the November 2, 2010, election and all subsequent elections for federal office.

Many state law provisions described below do not fully align with the requirements of the MOVE Act. In those instances, state law or administrative policy may need to be modified to comply with the MOVE Act. The Government Accountability Board (GAB) has outlined how the state will comply with the MOVE Act in “Wisconsin’s MOVE Act Compliance Plan & Implementation Timetable,” which was prepared as part of the state’s request for an undue hardship waiver, available at: www.fvap.gov/resources/media/wi_waiver_request.pdf.

45-DAY REQUIREMENT AND THE UNDUE HARDSHIP WAIVER

The MOVE Act

The MOVE Act requires that each state transmit an absentee ballot to a UOCAVA voter no later than 45 days before an election, if a valid request is received at least 45 days before the election. If a valid request is received less than 45 days before an election, the state must transmit an absentee ballot in accordance with state law and in a manner that expedites the transmission of the ballot. [42 U.S.C. s. 1973ff-1 (a) (8).]

The MOVE Act allows a state to request an undue hardship waiver of the 45-day requirement if a state determines that it is not able to meet the 45-day requirement for an election because one or more of the following issues creates an undue hardship for the state: (a) the state's primary election date prohibits the state from complying with the 45-day requirement; (b) the state constitution prohibits the state from complying with the 45-day requirement; or (c) the state has suffered a delay in generating ballots due to a legal contest. The MOVE Act specifies what must be included in a request for a waiver. One such requirement is that the state include a comprehensive plan to ensure that UOCAVA voters are able to receive requested absentee ballots and submit the ballots to the appropriate election official in time to have the ballots counted in an election. [42 U.S.C. s. 1973ff-1 (g) (1) and (2) (B).]

When an undue hardship waiver is requested by a state, the U.S. Department of Defense must consult with the U.S. Attorney General. The Department of Defense must approve a waiver request if the comprehensive plan submitted by the state provides UOCAVA voters sufficient time to receive requested absentee ballots and submit the ballots to the appropriate election official in time to have the ballots counted in an election and if the state identifies an undue hardship, as described above. A waiver that is granted only applies with respect to the election for which the request was submitted. [42 U.S.C. s. 1973ff-1 (g) (2) and (4).]

State Law

In Wisconsin, the 2010 September Primary is scheduled for September 14, 2010, and the 2010 General Election is scheduled for November 2, 2010. The primary and general election dates are set by state statute. Section 5.02 (5) and (18), Stats., provides that the September primary is held on the second Tuesday in September and that the general election is held on the Tuesday following the first Monday in November of even-numbered years. State law requires that absentee ballots be transmitted to electors who requested them no later than the 30th day before the general election. [s. 7.15 (1) (cm), Stats.]

To comply with the 45-day requirement in the MOVE Act, the state is required to transmit ballots to UOCAVA voters by September 18, 2010, four days after the September primary. Because of the timing of Wisconsin's primary date, Wisconsin requested an undue hardship waiver of the 45-day requirement on August 2, 2010. The request was denied by the Department of Defense on August 27, 2010. The Department of Defense determined that the state has an undue hardship but found that the state's comprehensive plan does not meet the requirement in the MOVE Act to provide sufficient time for UOCAVA voters to submit ballots.

The Department of Defense granted waivers to Delaware, Massachusetts, New York, Rhode Island, and Washington and denied waivers for Alaska, Colorado, Hawaii, the Virgin Islands, Wisconsin, and the District of Columbia. The Department of Defense has compiled the state waiver applications and its responses to the waiver requests on its website at: www.fvap.gov/reference/laws/waivers.html.

At the time of the publication of this Information Memorandum, the GAB and the U.S. Department of Justice are working to reach a resolution regarding the enforcement of the MOVE Act for the November 2, 2010, election. On September 2, 2010, the GAB sent a letter to local election officials notifying them of an anticipated consent decree, whereby the state would be required to accelerate its certification process for the September primary and its delivery of absentee ballots to military and overseas electors for the general election.

To comply with the 45-day requirement under the MOVE Act for elections after the November 2010 election, Wisconsin will be required to transmit absentee ballots to UOCAVA voters at least 45 days before an election, unless an undue hardship waiver is requested and granted for an election. Given the time required for post-election activities, the state may determine that it must change its September primary to an earlier date.

TRANSMISSION OF VOTER REGISTRATION APPLICATIONS AND ABSENTEE BALLOT APPLICATIONS

The MOVE Act

The MOVE Act requires that each state establish procedures for UOCAVA voters to request by mail and electronically voter registration applications and absentee ballot applications and for states to transmit by mail and electronically voter registration applications and absentee ballot applications. Each state must establish procedures by which a UOCAVA voter may designate mail or electronic transmission of his or her voter registration application or absentee ballot application. If a UOCAVA voter does not designate a preferred transmission method, the state must transmit the voter registration application or absentee ballot application by any method allowed under state law or by mail. [42 U.S.C. s. 1973ff-1 (a) (6) and (e) (5).]

State Law

State law requires that a clerk mail a voter registration application to an elector upon oral or written request of the elector. [s. 6.30 (4), Stats.] The GAB has interpreted a “written request” to include requests made by fax or email and allows blank registration forms to be transmitted electronically in some circumstances. [“Wisconsin’s MOVE Act Compliance Plan & Implementation Timetable,” GAB.] The *Wisconsin Voter Registration Application* (GAB-131) is available in electronic format on the GAB’s website. Military electors, as defined in s. 6.22 (1) (b), Stats., are not required to register to vote. [s. 6.22 (3), Stats.]

In addition, state law allows an elector to apply for an absentee ballot by mail, fax, or email. An elector who applies for an absentee ballot by email or fax must return a copy of the absentee ballot request bearing the elector’s original signature with the voted ballot. [s. 6.86 (1) (a) 6. and (ac), Stats.] The *Wisconsin Application for Absentee Ballot* (GAB-121) is available in electronic format on the GAB’s website.

TRANSMISSION OF BLANK ABSENTEE BALLOTS

The MOVE Act

The MOVE Act requires that each state establish procedures to transmit blank absentee ballots by mail and electronically to UOCAVA voters and by which a UOCAVA voter may designate mail or electronic transmission of his or her blank absentee ballot. If a UOCAVA voter does not designate a preferred transmission method, the state must transmit the ballot by any method allowed under state law or by mail. [42 U.S.C. s. 1973ff-1 (a) (7) and (f) (1) and (2).]

State Law

State law requires that a clerk mail an absentee ballot, except that a clerk may transmit a fax or email copy of an absentee ballot to an elector if the time required to transmit the ballot by mail is not sufficient to enable the return of the ballot by 8 p.m. on Election Day. [s. 6.87 (3) (a) and (d), Stats.]

An emailed or faxed ballot must be returned by mail and received by the clerk by 8 p.m. on Election Day, except that for a military elector, as defined in s. 6.34 (1) (a), Stats., who is absent from his or her residence because of active duty, the ballot must be postmarked no later than Election Day and received by the clerk no later than 5 p.m. on the 7th day after the September primary or no later than 5 p.m. on the 10th day after the general election. [ss. 6.221 (3) and 6.87 (6), Stats.]

The *Wisconsin Application for Absentee Ballot* (GAB-121) allows an elector to designate fax or email as the elector's preferred method to receive an absentee ballot.

SECURITY AND PRIVACY

The MOVE Act

The MOVE Act requires that each state ensure that the procedures for transmission of voter registration applications, absentee ballot applications, and blank absentee ballots protect the security and integrity of the application request processes and of absentee ballots. Further, each state must ensure that the procedures for transmission of voter registration applications, absentee ballot applications, and blank absentee ballots protect the privacy of the identity and other personal data of UOCAVA voters. [42 U.S.C. s. 1973ff-1 (e) (6) and (f) (3).]

State Law

State law requires that the GAB compile and maintain an official voter registration list electronically. The official registration list is required to contain information about each registered elector in the state, including an indication of whether the elector is a military elector, as defined in s. 6.34 (1) (a), Stats., or an overseas elector, as defined in s. 6.24 (1), Stats. The official registration list is open to public inspection under the state open records law, except that access to certain information, including the elector's date of birth, operator's license number, and Social Security number, and authorization to make changes in the list are restricted to specific election officials and employees. [s. 6.36 (1) (a) and (b), Stats.]

State law also requires that clerks keep lists of absent electors and military electors. Section 6.89, Stats., requires that a clerk keep a list of all electors who apply for an absentee ballot and who have voted as an absent elector that includes the name, address, and date of application. Section 6.22 (6), Stats., requires that a clerk keep a list of all eligible military electors, as defined in s. 6.22 (1) (b), Stats., who reside in the municipality that includes the name, latest-known military residence, and military mailing address of each military elector.

MEANS OF ELECTRONIC COMMUNICATION

The MOVE Act

The MOVE Act requires that each state designate at least one means of electronic communication for use by UOCAVA voters to request voter registration applications and absentee ballot applications; for the purpose of providing information relating to elections, voting, and balloting to UOCAVA voters; and for use by the state to transmit voter registration applications and absentee ballot applications. Informational and instructional materials that accompany balloting materials sent to UOCAVA voters must include the designated means of electronic communication. [42 U.S.C. s. 1973ff-1 (e) (1), (2), and (3).]

State Law

For UOCAVA voters, the GAB has designated its general fax number and email address as a means of electronic communication. The GAB plans to revise its absentee ballot materials and informational and instructional materials to include the GAB's fax number and email address. ["Wisconsin's MOVE Act Compliance Plan & Implementation Timetable," GAB.]

FEDERAL WRITE-IN ABSENTEE BALLOTS

The MOVE Act

The MOVE Act expands the use of the federal write-in absentee ballot to all elections for federal office, including special, primary, runoff, and general elections, effective December 31, 2010. [42 U.S.C. s. 1973ff-2.] Prior to the MOVE Act, the federal write-in absentee ballot was used only for general elections for federal office.

State Law

State law provides that a military elector, as defined in s. 6.22 (1) (b), Stats., or overseas elector, as defined in s. 6.24 (1), Stats., who transmits an absentee ballot application for a general election no later than 30 days before the election may, in lieu of the official ballot, cast a federal write-in absentee ballot. [s. 6.25 (1), Stats.] State law does not allow the use of federal write-in absentee ballots for elections for federal office, other than general elections.

NOTARIZATION, PAPER TYPE, AND ENVELOPE TYPE

The MOVE Act

The MOVE Act provides that a state may not refuse to accept and process voter registration applications, absentee ballot applications, marked absentee ballots, or federal write-in

absentee ballots submitted by UOCAVA voters based solely on notarization requirements; restrictions on paper type, including size and weight; and restrictions on envelope type, including size and weight. [42 U.S.C. ss. 1973ff-1 (i) and 1973ff-2 (f).]

State Law

State law does not require notarization for voter registration applications, absentee ballot applications, marked absentee ballots, or federal write-in absentee ballots.

State law requires that the GAB prescribe the format, size, and shape of voter registration forms. [s. 6.33 (1), Stats.] The *Wisconsin Voter Registration Application* (GAB-131) is available in paper or electronic format. However, a UOCAVA voter may use the Federal Post Card Application (Standard Form 76) to register to vote and to apply for an absentee ballot. [ss. 6.22 (2) (c) and 6.24 (4) (b), Stats.] Military electors, as defined in s. 6.22 (1) (b), Stats., are not required to register to vote. [s. 6.22 (3), Stats.]

In addition, state law does not restrict the paper type or envelope type for absentee ballot applications. An elector may apply for an absentee ballot by various methods, including by mail, fax, or email. [s. 6.86 (1) (a) and (ac), Stats.] The *Wisconsin Application for Absentee Ballot* (GAB-121) is available in paper or electronic format.

Lastly, state law contains requirements for ballots, including a requirement that the paper used for ballots be 35 pounds per ream for sheets 24 inches by 36 inches. If a different size sheet is used, the weight per ream must be proportioned accordingly. The ballot size and weight requirement does not apply to ballots used with electronic voting systems. [s. 5.51, Stats.] However, state law provides that a military elector, as defined in s. 6.22 (1) (b), Stats., or overseas elector, as defined in s. 6.24 (1), Stats., may cast a federal write-in absentee ballot or state write-in absentee ballot, if the military or overseas elector applies for an absentee ballot no later than 30 days before an election. [s. 6.25, Stats.]

TRACKING MARKED BALLOTS

The MOVE Act

The MOVE Act requires each state to develop a free access system by which a UOCAVA voter may determine whether his or her absentee ballot has been received by the appropriate election official. [42 U.S.C. s. 1973ff-1 (h).]

State Law

In Wisconsin, the Voter Public Access system (<https://vpa.wi.gov/>) allows a voter to look up his or her voter status and polling place location and to check the status of a provisional vote. The GAB has modified the Voter Public Access system to permit a military elector or overseas elector to verify that his or her absentee ballot has been received by the appropriate election official. ["Wisconsin's MOVE Act Compliance Plan & Implementation Timetable," GAB.]

DATA ON ABSENTEE BALLOTS

The MOVE Act

The MOVE Act requires that each state report data on the number of absentee ballots transmitted and received for UOCAVA voters and any other data, as determined by the U.S. Department of Defense. [42 U.S.C. s. 1973ff-1 (a) (11).]

State Law

State law requires that clerks transmit to the GAB, within 30 days after each general election, a report of the number of absentee ballots transmitted by the clerk to military electors, as defined in s. 6.34 (1) (a), Stats., and overseas electors, as defined in s. 6.34 (1) (b), Stats., for that election and the combined number of those ballots that were cast. The GAB is required to compile the information received from clerks and transmit it to the U.S. Election Assistance Commission within 90 days after each general election. [s. 6.276, Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Jessica Karls-Ruplinger, Staff Attorney, on September 9, 2010.

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536

Telephone: (608) 266-1304 • Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

<http://www.legis.state.wi.us/lc>